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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 ANIBAL MESALA SILVA,

12 Appellant,

13 vs.

14 JOSEPH GAETA,

15 Appellee.

CASE NO. 08 CV 0783 JM (WMC)

**ORDER DENYING MOTION TO
STAY WITHOUT PREJUDICE**

16 Appellant, a non-prisoner proceeding pro se, moves to stay this bankruptcy appeal pursuant
17 to the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. App. § 522. (Doc. no. 6.) He seeks an
18 initial 90-day stay of proceedings followed by an additional 30-day stay. Section 522 applies to any
19 civil action or proceeding in which, at the time a party files an application under the section, that party
20 is in military service and has received notice of the action or proceeding. 50 U.S.C. App. § 522(a).
21 Upon the servicemember's application, the court must stay the action for at least 90 days if the
22 servicemember submits the following two documents:

23 (A) a letter or other communication setting forth facts stating the manner in which
24 current military requirements materially affect the servicemember's ability to appear
and stating a date when the servicemember will be available to appear.

25 (B) A letter or other communication from the servicemember's commanding officer
26 stating that the servicemember's current military duty prevents appearance and that
military leave is not authorized for the servicemember at the time of the letter.


27 50 U.S.C. App. § 522(b)(2). In this case, Appellant's motion satisfies § 522(b)(2)(A) by explaining
28 that Appellant would begin military training on June 12, 2008, and would be unable to file papers or

1 appear in court until the conclusion of his training on approximately September 21, 2008.
2 Nevertheless, the court cannot grant the requested stay because Appellant has not submitted a letter
3 or communication from his commanding officer in compliance with § 522(b)(2)(B).

4 The court therefore **DENIES** the motion without prejudice to the filing of a motion complying
5 with both requirements of § 522(b)(2).

6 IT IS SO ORDERED.

7 DATED: July 2, 2008

8 
9 Hon. Jeffrey T. Miller
United States District Judge

10 cc: All parties
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